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ONTARIO

ROYAL COMMISSION ON BOOK PUBLISHING



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ONTARIO

ROYAL COMMISSION ON BOOK PUBLISHING

Mr. Richard Rohmer, Q.C. Chairman
Dr. Marsh Jeanneret Commissioner
Mr. Dalton Camp Commissioner

Mr. Robert Fleming Executive Secretary

APPEARANCES:

Joseph Sedgwick, O.C. for Metropolitan Toronto
News Company & Affiliates

Hearings held at 252 Bloor Street West,
Toronto, Ontario on December 10, 1971

This transcript has not been edited,
corrected or revised by the Commissioners,
but may subsequently be edited, corrected
and revised.

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Nethercut & Co. Ltd.

Toronto, Ontario

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Toronto, Ontario,
December 10, 1971.

---The hearing resumed at 10.00 a.m.

THE CHAIRMAN: I think if we could proceed. This hearing has been called pursuant to the direction given to this Commission under an Order-in-Council approved by His Honour the Lieutenant Governor dated the 18th day of November, 1971. For the record I should read this Order-in-Council:

" Upon the recommendation of the Honourable the Prime Minister, the Committee of Council advise that Order-in-Council dated the 23rd day of December, A.D. 1970, and numbered OC-3991/70, be amended by adding clause (d) after clause (c) as follows:

(d) the contracts or proposed contracts between any geographical wholesaler of mass market paperback books and periodicals and any retailer of such goods that creates or tends to create an obligation on the retailer to purchase all merchandise supplied by the wholesaler from that wholesaler to the exclusion of other sources of



1 " supply and, without limiting
2 the generality of the foregoing,
3 to inquire into the merchandising
4 of paperback books, periodicals,
5 and other merchandise normally
6 carried by geographical wholesalers
7 and sold by their retailers."

8 Now, this is a specific term of
9 reference under which the Commission has taken
10 certain action. The proceedings this morning
11 are as a result of a subpoena which the Commission
12 issued to Mr. John Romanez, who is here with
13 counsel, in which the Commission has asked for
14 certain information to be produced.

15 Mr. Sedgwick is here as counsel for --

16 MR. SEDGWICK: For Metro Toronto News.

17 THE CHAIRMAN: For Metro Toronto
18 News. Is there anyone with you?

19 MR. SEDGWICK: Mr. Ridout.

20 THE CHAIRMAN: I think in relation
21 to the questions, Mr. Sedgwick, that we have, perhaps
22 you could assist us?

23 MR. SEDGWICK: That's what I
24 thought, sir. Before you swear Mr. Romanez if
25 you and your colleagues would be good enough to
26 turn to Appendix A which is attached to the subpoena
27 and the first item is all written contracts between
28 Metro News and retailers and I do not need to read
29 it as you have it in front of you but I would like
30 to file two copies of the dealer agreement that was



1 circulated.

2 THE CHAIRMAN: That will be
3 Exhibit No. 1.

4
5 ---EXHIBIT NO. 1: Copy of dealer agreement.

6 THE CHAIRMAN: Exhibit No. 1 is
7 entitled dealer agreement and is under the heading
8 of Metro Toronto News Company with its address.

9 MR. SEDGWICK: I should have added
10 there was no date on it and Mr. Romanez will confirm
11 this but I believe it was circulated, or to the
12 extent it was circulated, in September of 1971 but
13 it was prepared by the then legal advisors to the
14 company, Enfield, Kimberley and Hemerich
15 in August of 1970.

16 Then, sir, there is another agreement
17 called a display equipment agreement but this was
18 never circulated but it, too, was prepared by the
19 same firm of lawyers in 1970 and it covers these
20 display racks and so forth and I will file it.
21 I must repeat that it was never circulated.

22 MR. ROMANEZ: That is right.

23 THE CHAIRMAN: That will be
24 Exhibit No. 2.

25 ---EXHIBIT NO. 2: Copy of display equipment
26 agreement.

27 MR. SEDGWICK: Then, sir, the next
28 item I am looking at is a list of all retail dealers
29 to which a dealer agreement has been sent or is to
30 be sent and I have here a list which shows, I believe,



1 all our retail dealers and under the heading,
2 "Sent" it shows the ones to whom it was sent and
3 under the heading "Returned" it shows the dealers
4 who returned the agreement.

5 THE CHAIRMAN: Does "returned" mean
6 signed and returned?

7 MR. SEDGWICK: Signed and returned,
8 subject to what I will have to say in a moment, sir,
9 and I will file an original of that and Xerox copies.

10 ---EXHIBIT NO. 3: List of retail dealers to which
11 a dealer agreement has been sent.

12 MR. SEDGWICK: Then, sir, still
13 dealing with No. 3, I do not know if we had any
14 refusals to sign. I suppose it is a fair inference
15 that the ones who did not send it back tacitly
16 refused to sign it.

17 Then, however, there is an item that
18 is neither a signature refusal or -- six dealers
19 sent back the agreement with amendments, and I have
20 here the six copies of the dealer agreements which
21 were returned. In one case they struck out part of
22 paragraph 1 to exclusivity and in the second case
23 they struck out the word "merchandise" -- I believe
24 in the first case and they made slight amendments
25 and another one struck out the first paragraph,
26 so did the next one strike out the first paragraph,
27 respecting exclusivity and the last one amended
28 that paragraph as to exclusivity and Mr. Romanetz
29 tells me and will tell the Commission that in every
30 case these agreements were signed by the Metro





1 Toronto News and returned to the dealer as amended
2 and I will file those because they refer to the
3 question of refusal to sign.

4 THE CHAIRMAN: This group would be
5 Exhibit 4.

6
7 ---EXHIBIT NO. 4: Six amended dealer agreements

8
9 MR. SEDGWICK: Then, as to item 4
10 a list of all retail dealers who made an oral
11 agreement, I am informed that there are none.

12 Then, as to items 5, 6, 7 and 8,
13 because it was convenient to give the information
14 on one sheet rather than on five, or rather four
15 different sheets, the list of the merchandise sold
16 or intended to be sold and date of commencement
17 of sale, the details of the prices offered or
18 demanded and the country of origin and I produce a
19 list which shows the date first purchased, the
20 supplier, the description of the items and the
21 manufacturer's suggested retail price, the dealer
22 price and the cost, or our cost.

23 Now, as to the country of origin
24 I can only say that in all cases my clients purchased
25 from Canadian suppliers and I am not able to say what
26 the country of origin is, but in every case they were
27 purchased from Canadian suppliers and then as
28 Mr. Romanez will say, if he is asked, the total
29 amount of the sales is less than 1 per cent of our
30 total sales, an inconcernable amount. Actually it may

The first part of the paper discusses the importance of the study. It highlights the need for a comprehensive understanding of the subject matter. The second part of the paper describes the methodology used in the study. It details the data collection process and the analysis techniques employed. The third part of the paper presents the results of the study. It discusses the findings and their implications. The fourth part of the paper concludes the study and provides recommendations for future research.



1 be half a per cent.

2 MR. ROMANEZ: Half a per cent.

3
4 ---EXHIBIT NO. 5: List of merchandise sold, and
5 details of prices, costs, date
6 of first purchase, supplier

7 MR. SEDGWICK: Then, sir, item 9 --
8 5, 6, 7 and 8 are all covered in the list I have
9 already filed, but item 9, the terms of credit,
10 I am told that as to small suppliers they are supposed
11 to pay weekly but they do not and to the larger
12 customers they are billed on a monthly basis and
13 I produce first, one of the invoices which I am told
14 is sent to the accounts that are on a weekly basis
15 and it so says on it, "Accounts are payable on a
16 weekly basis". Then, as to the larger retailers
17 I produce a copy of the invoice which is sent to them
18 and which I am told is sent monthly.

19 THE CHAIRMAN: Those two will be
20 Exhibits 6A and 6B.

21 ---EXHIBIT 6A: Invoice sent to accounts that
22 are on a weekly basis.

23
24 ---EXHIBIT 6B: Invoice sent to the larger
25 retailers that are on a
26 monthly basis.

27 THE CHAIRMAN: Is 6A the one that
28 is weekly?

29 MR. SEDGWICK: Yes, it says, "Payable
30 weekly", the other has no markings. But that is
correct.





1 Then, any changes since January 1st,
2 1971, I am told there have been none and the
3 only items to which I have no information is as
4 to the terms of credit as to the Pierce News Company
5 of St. Louis and I have nothing about it because
6 it may seriously embarrass that company if we
7 disclose particulars of credit if they do not
8 do business here.

9 Now, I think that is all of
10 Exhibit A, now when I come to Exhibit B--

11 THE CHAIRMAN: I take it that your
12 client is not prepared to provide any information
13 on the line requested in that sector?

14 MR. SEDGWICK: That is correct,
15 Mr. Romanez has no particulars.

16 MR. CAMP: And is not about to give
17 any.

18 MR. SEDGWICK: That is correct.

19 MR. CAMP: If we want to find out
20 we would have to do it other ways?

21 MR. SEDGWICK: I do not think it
22 would be fair about Pierce unless you find out
23 what their competitors do because they are in a
24 competitive situation.

25 MR. CAMP: And Metro is not?

26 MR. SEDGWICK: Oh yes. . . . Pierce
27 is in St. Louis and I am content to recognize that
28 as to Metro under the Order-in-Council at least
29 at the moment, subject to the jurisdiction of this
30 Commission, but I do not think the same applies to Pierce.





1 Then, as to Appendix B which deals --

2 THE CHAIRMAN: I just want to have
3 this straight on the record. I take it that
4 Pierce News Company to the extent that it is, or
5 does have, effective control in the management of
6 Metro Toronto News through you or through Mr. Romanez
7 does, in fact, object to you giving that information
8 to us, privately or otherwise?

9 MR. SEDGWICK: I had not considered
10 the matter, providing the information privately.
11 My colleague tells me the terms are similar to the
12 terms here but they have a great many customers
13 and it would be embarrassing to them with their
14 customers if they were to disclose those terms
15 and were to make public the fact that if a
16 customer was to find out he was getting, say,
17 worse terms than some other customer and that may
18 well be true but I do not know I have not made
19 any inquiries.

20 However, as to Mr. Romanez, he
21 assures me he does not have the information.

22 MR. ROMANEZ: I certainly have not.

23 MR. SEDGWICK: And he has never had
24 the occasion to ask them.

25 Now, as to Appendix B, and I have
26 not compared it word for word, I think that except
27 for the fact the name is different it is the same
28 as Appendix A and I merely say that while Metro
29 services the territory of Upper Canada News Limited,
30 Upper Canada News Limited as such does not have any





1 retail dealers, is that correct?

2 MR. ROMANEZ: They do not have
3 any retail accounts.

4 MR. SEDGWICK: And also I am told that
5 no agreements were sent out to the accounts that
6 were Upper Canada News Limited and I do not believe
7 merchandisers supplied those accounts.

8 MR. ROMANEZ: I do not believe so.

9 MR. SEDGWICK: At the present time
10 no merchandise is supplied. And, as to terms of
11 credit, I think they are the same as for Appendix A.

12 Then, as to Appendix C which is
13 Western Ontario News, I think our answers would be
14 the same as Appendix B, is that correct?

15 MR. ROMANEZ: Yes.

16 MR. SEDGWICK: Western Ontario
17 does not directly distribute anything and no
18 agreements were sent out to the retailers who were
19 formerly dealing with Western Ontario News and
20 they have never been offered any merchandise.

21 THE CHAIRMAN: Do I take it from these
22 statements, Mr. Sedgwick, that Metro Toronto News
23 is, in fact, conducting the operations that were
24 formerly those of Upper Canada News and Western
25 Ontario News? In other words, you have taken those
26 over directly?

27 MR. SEDGWICK: That is right, but they
28 have not sent to those people what I call the
29 acquisitions, they have not sent out the agreements
30 that have been filed and they do not solicit them to



1 sell merchandise.

2 Then, we come to Appendix D which is
3 Lambton News, the answers would be the same as
4 for C, is that correct?

5 MR. ROMANEZ: Exactly.

6 MR. SEDGWICK: And they have not
7 been solicited to sell merchandise and as to terms
8 of credit they would be the same or similar to
9 the terms of Metro News itself. I did not prepare
10 any separate answer.

11 As to Appendix E, Somerset Specialties,
12 it is not an operating company at all but, in
13 any event, if it had any customers, that is any
14 retail customers or retail dealers, no agreements
15 have been sent out and no merchandise has been sent
16 to them or offered to them and it has no direct
17 customers -- there are no terms of credit.

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1 I think that is the complete answer
2 to the subpoena and some antecedent material that I
3 won't bother the Commission with at the moment.
4 Mr. Romanez is here.

5 THE CHAIRMAN: I wonder if we might
6 swear Mr. Romanez and then ask him questions?

7
8 JOHN ROMANEZ, sworn

9
10 EXAMINATION BY THE CHAIRMAN:

11
12 Q. If I may just ask one or two
13 questions to lead off. You have heard your counsel
14 put forward the various statements and make certain
15 statements which give these lists and other documents
16 background. Do you concur and agree with the
17 statements he has made in support of the filing
18 of these documents?

19 A. Yes.

20 Q. Now, I understand that Exhibit
21 No. 1 was prepared in draft form by your former
22 solicitors, according to Mr. Sedgwick, in about the
23 year 1970. When was the decision made to send out
24 this contract for circulation among the retailers?

25 A. September, the end of September,
26 1971.

27 Q. September of 1971. Who made the
28 decision in your firm?

29 A. I can't tell you exactly. I
30 was away from the office at the time. The agreement



1 was not exactly complete because, what we had
2 was a draft agreement and that was in the hold file.
3 I can explain the whole story for you.

4 Q. That is what we are here for.
5 Can you tell us now?

6 A. Our credit department was having
7 some problems collecting from the smaller type of
8 dealer and they came across this agreement and
9 discussed it amongst themselves, the credit manager,
10 finance manager ---

11 Q. Who are those people? What are
12 their names?

13 A. Larry Macfarlane, Dave Robinson,
14 and Ben Wilcock.

15 DR. JEANNERET: What do you mean
16 when you say they came across this?

17 THE WITNESS: Mr. Enfield sent
18 three copies of the draft, one to me, one to the
19 finance manager and one copy to Mr. McMonigle, so
20 there were three copies of this draft floating
21 around. My copy was in the "hold" file. I wasn't
22 satisfied with the wording exactly, so I held it.

23 Now, I went away to California at
24 the time on a convention and this agreement was
25 released at that time. The specific purpose of the
26 release was to try and get some of the collections
27 in. If you will notice, the only accounts that
28 received this were the weekly accounts. It wasn't
29 sent out to any of the acquistioned areas where
30 we had no problems with collections. It wasn't sent



1 out to any of the monthly accounts where we weren't
2 having problems with collections, and it wasn't
3 sent out to any of the country areas where we weren't
4 having any problem with collections.

5 THE CHAIRMAN: Q. To how many
6 retailers was it sent?

7 MR. SEDGWICK: It is at the bottom
8 of the sheet, 787 out of 6000 dealers.

9 THE CHAIRMAN: Q. That was sent to
10 787, as shown on the sheet?

11 A. 148 returned.

12 Q. Were these all sent out while
13 you were away?

14 A. They were sent out, I believe,
15 on the Friday that I left without my knowledge.

16 Q. They were sent without your
17 knowledge. How long were you away?

18 A. I was away for two weeks.

19 Q. And when you got back, were you
20 informed about this?

21 A. Yes, I was.

22 Q. Who told you about it?

23 A. I was informed just as soon as
24 I got back. In fact, I was informed when I phoned
25 my office.

26 DR. JEANNERET: Whose signature is
27 on it for your firm, I can't read the writing.

28 THE WITNESS: Mr. McFarlane, the
29 credit manager.

30 THE CHAIRMAN: Q. What did you do



1 about it when you got back and found it had gone out?

2 A. I discussed it very explicitly
3 and virtually the agreement as it stands, I had to
4 go along with it. This is what I was told by our
5 solicitors.

6 Q. Mr. Ridout?

7 A. By Mr. Ridout and Mr. Sedgwick.
8 In order to -- first to give you the background, we
9 had no intention of enforcing this agreement at all
10 because this went out strictly as a credit -- to
11 exemplify our credit terms in paragraph 3. If you
12 read paragraph 3 you will see what it says in
13 paragraph 3.

14 Q. Paragraph 3 purports to set out
15 the delivery obligations and invoicing and payment.
16 These are the items covered in it.

17 A. Exactly. This is the reason it
18 was sent out. We had no intention of enforcing it.
19 It was quite obvious when they came back in. All
20 we wanted to do now was reword it properly so that
21 it will be acceptable by our retailers.

22 Q. This was in September, I take it?

23 A. Right.

24 Q. If this was your intention, did
25 you do anything about recasting it and sending out
26 something to the retailers which gave evidence of
27 the intentions you have just expressed?

28 A. Other than meet with the Retail
29 Merchants' Association, no.

30 Q. When did you meet with them?



1 A. Two weeks ago.

2 Q. Who requested that meeting?

3 A. I think it was a mutual request
4 by both ourselves.

5 Q. What did you discuss at that
6 meeting with the Retail Merchants' Association
7 generally?

8 A. Generally we discussed the
9 contract and mutual agreements on mutual problems
10 and we had an excellent meeting. I feel we
11 made headway in that direction and I believe the
12 Retail Merchants' Association did not object to
13 the agreement as such. They would have welcomed
14 it if it had been worded a little bit differently.

15 Q. In what area?

16 A. In the first paragraph -- I
17 believe the bottom paragraph off-sets ---

18 Q. The first paragraph says:

19 "The dealer agrees that he
20 will deal exclusively with Metro
21 Toronto News Company in regard to
22 any merchandise or publications
23 supplied by Metro Toronto News
24 Company, and that he will not
25 purchase the same publications
26 or merchandise from any other supplier
27 or source. Metro Toronto News
28 Company agrees to make available to
29 the dealer on request, details of
30 all of the publications or merchandise



1 that are available, from time to time."

2 And you make reference to the last paragraph?

3 A. Reference to the paragraph where
4 it says:

5 "Returns on merchandise and
6 publications . . ."

7 We are talking about returnable merchandise and
8 publications only, because all merchandise and
9 publications we supply are on a fully returnable
10 basis.

11 Q. I wonder if you could point that
12 out in this agreement? Have you got a copy in
13 front of you?

14 A. We pointed out -- no, I think
15 Mr. Sedgwick has it.

16 Q. Perhaps Mr. Sedgwick can let you
17 have a copy. Will you point out for the record
18 what you refer to?

19 MR. SEDGWICK: I think he is
20 referring to paragraph 3.

21 THE WITNESS: Paragraph 3, section
22 (III):

23 "All returns on merchandise
24 and publications are to be made
25 up by the dealer and picked up at
26 regular intervals."

27 I feel this exemplifies what we are talking about
28 in returnable merchandise.

29 MR. SEDGWICK: And item (IV), "Payment
30 for Merchandise".





1 THE CHAIRMAN: Item 4 says:

2 "Either party may . . ." ---

3 MR. SEDGWICK: I am thinking of
4 item 3, subsection (IV):

5 "Payment for merchandise and
6 publications sold by the dealer,
7 being the invoice price
8 less credit for returns, shall be
9 paid for weekly/monthly by the
10 dealer."

11 I believe that depends on the size of the account.

12 THE WITNESS: Yes.

13 MR. CAMP: Well, I ---

14 MR. SEDGWICK: I should make it
15 clear that the contract only deals with returnable
16 merchandise, that is, merchandise which they buy
17 and which, if they do not sell, they can return
18 and get credit for. If it doesn't say that, and I
19 think it does, that is clearly the intention of it.

20 THE CHAIRMAN: That is the intention.
21 Are you saying -- I want to be clear on what your
22 submission is, Mr. Sedgwick -- are you saying that
23 under paragraph 1 and paragraph 2 that the covenant
24 given by the dealer relates only to merchandise
25 which is returnable?

26 MR. SEDGWICK: Yes, and relates
27 only to merchandise or publications supplied by
28 Metro Toronto News, and when it says here "will not
29 purchase the same", I don't want to refer back to
30 what was said before, but the Commission will recall
that one of the problems in this business is the





1 problem of people buying from us and then returning
2 to us for credit items they did not purchase from
3 us. Some of them, as a matter of fact, we have
4 reason to believe, are stolen from us, and I think
5 it fairly deals with it. He agrees that he will
6 only return to us what he bought from us. That
7 is all it is intended to do anyway.

8 THE CHAIRMAN: I wonder if you
9 could help us by interpreting the words "that he
10 will not purchase the same publications or
11 merchandise from any other source"? What interpreta-
12 tion do you put on that?

13 MR. SEDGWICK: It is consistent with
14 the intention of the agreement that if he purchases
15 the same publications from us and from another source,
16 we, then, are likely to get back, returned for
17 cash credit, publications which were not purchased
18 from us. I think there was considerable evidence
19 that that element of exclusivity is almost necessary
20 in this business. That is all that is intended to
21 do, that he will not buy, shall we say, TV Guide
22 from us and then buy some from somebody else and
23 then return to us for full cash credit, the ones
24 he bought from somebody else. If the language
25 isn't ideal -- I am not responsible for the language.

26 THE CHAIRMAN: We are interested,
27 of course, in any interpretation you want to put
28 on it.

29 MR. SEDGWICK: That is the intended
30 interpretation.



1 THE CHAIRMAN: This wording
2 also, I would like you to give us what you think
3 it means:

4 "The dealer agrees that he will
5 deal exclusively with Metro Toronto
6 News Company in regard to any
7 merchandise or publications supplied
8 by Metro Toronto News Company."?

9 MR. SEDGWICK: And you must read on:
10 ". . . and he will not purchase the
11 same publications or merchandise
12 from any other supplier or source."

13 THE CHAIRMAN: The two should be
14 read together?

15 MR. SEDGWICK: Yes, because that
16 is the object of the document to make sure we do
17 not get back and pay for goods that we did not,
18 in the first instance, sell.

19 THE CHAIRMAN: Is it not
20 reasonable to construct this in such a way that
21 also, if you are reading it as a layman, that
22 there is an obligation on the retailer that he will
23 not buy from anybody else?

24 MR. SEDGWICK: Only as to the things
25 we have supplied him. If we supply him with
26 TV Guide, he says he won't buy TV Guide somewhere
27 else. Many people buy TV Guide from us. I am
28 told some buy it from somebody else, but they
29 don't buy both from us and somebody else. They
30 buy exclusively either from us or from somebody



1 else. That, of course, is tied up with the very
2 difficult question of returns. Mr. Romanez will
3 say, if asked, they estimate that in one year
4 thefts, peculations, if you like, may amount to
5 as much as half a million dollars. We have
6 strong reasons to suspect that those stolen goods
7 go back to some of our dealers and are then
8 returned to us for cash credit, so what we are
9 doing is buying back our own stuff. All we are
10 asking the dealer to do is to buy from us, if he
11 buys from us, and buy from us only those items.

12 As to the merchandise, he can buy
13 whatever we are selling from anybody he likes.

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1 MR. CAMP: Provided that Metro
2 were not selling pens?

3 MR. SEDGWICK: Not pens, but if you
4 look at our list, our list specifies that named
5 items --

6 MR. CAMP: But if I signed the
7 contract and Metro decided to sell pens then I would
8 have to buy pens from Metro?

9 MR. SEDGWICK: No, we do not just sell
10 pens.

11 THE WITNESS: A specific pen.

12 MR. SEDGWICK: A specific pen.

13 THE CHAIRMAN: Let Mr. Romanez respond.

14 THE WITNESS: It is just for a
15 specific pen. If we sell a specific pen and
16 if someone else wants to buy a completely different
17 pen they are perfectly free to buy it but that
18 pen we sell them is returnable to us. So, if he
19 buys the same pen he can buy it at 80 cents and from us
20 he can buy it at 50 cents and get 80 cents credit.
21 So that specific pen or merchandise he cannot
22 buy off anyone else.

23 DR. JEANNERET: I do not know how
24 you would do it, but suppose you sold Coca-Cola
25 it would have to be purchased from you?

26 THE WITNESS: If it was on a
27 returnable basis.

28 DR. JEANNERET: If it was on your
29 list of merchandise?

30 MR. SEDGWICK: If it is on a returnable





1 basis.

2 THE WITNESS: I do not care who they
3 buy from or where they get it if it is outright.

4 MR. SEDGWICK: Do you follow that?
5 If they buy it and pay for it it is not returnable.

6 THE CHAIRMAN: I understand what
7 is being said but I am trying to relate that to
8 what the written document says and I am not here
9 to argue with you, I am just here to get your
10 interpretation because we undoubtedly will be putting
11 our own interpretation on material and we are
12 interested in what your interpretation is or the
13 manner in which you think this should be done.

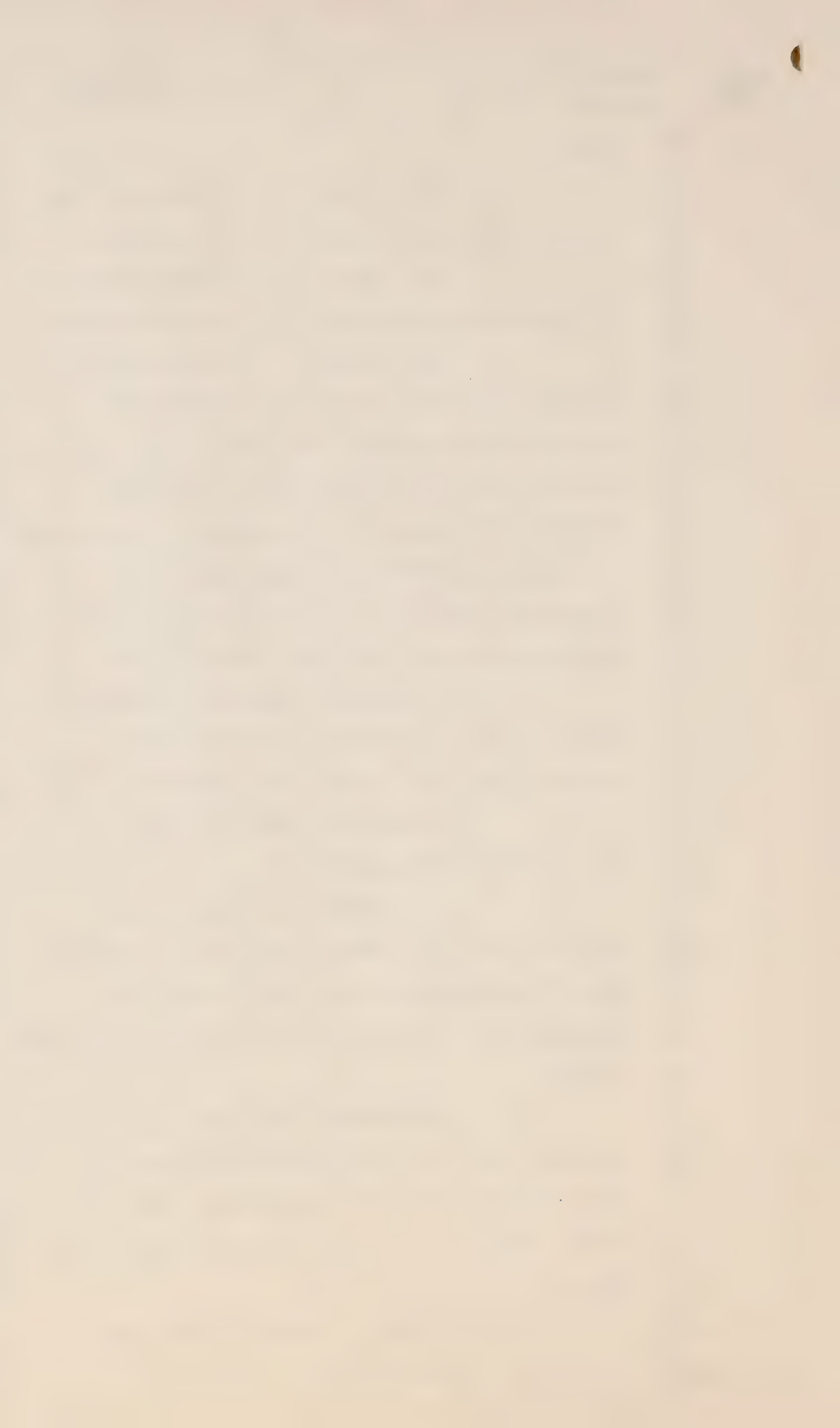
14 Is there any reference in paragraph 1
15 only to returnable merchandise? That might be
16 helpful to us. Mr. Romanetz could answer that.

17 THE WITNESS: Not in paragraph 1
18 but there is in paragraph 3.

19 DR. JEANNERET: Did any of the
20 dealers to whom you offered this contract indicate
21 that their interpretation of what is says was
22 different from the interpretation you have endeavoured
23 to give?

24 THE WITNESS: Yes, they did. In
25 the cases where they did they changed it and
26 we accepted it, if their interpretation was
27 wrong. Rather, if they felt our interpretation was
28 wrong.

29 MR. CAMP: You mean in the event
30 they did not understand it?





1 THE WITNESS: Yes.

2 MR. CAMP: In other words, there
3 were specific examples where you amended this
4 agreement with some dealers in order to make it clear
5 that you meant returnable publications and
6 merchandise?

7 THE WITNESS: Yes.

8 MR. CAMP: But, of the dealers who
9 did sign it without any request for any change --

10 THE WITNESS: They understood it.

11 MR. CAMP: They understood it.

12 THE WITNESS: Yes.

13 MR. CAMP: I missed a figure you
14 gave, is it 1 per cent?

15 THE WITNESS: One-half of 1 per cent.

16 MR. CAMP: Of gross?

17 THE WITNESS: Of net sales.

18 THE CHAIRMAN: Q. When is it you
19 started to sell merchandise other than paperback books
20 and periodicals?

21 A. It goes back to the beginning
22 of time, almost.

23 Q. And you have given us a list
24 of those things you do distribute now?

25 A. Yes.

26 Q. That is in the material?

27 A. Yes.

28 Q. Which list was that?

29 A. Exhibit 5.

30 Q. Exhibit 5?



1 A. Yes.

2 MR. SEDGWICK: It answers your
3 questions Nos. 5, 6, 7 and 8.

4 MR. CAMP: Did I understand, just
5 to clear something else up, that all this material
6 is produced in Canada or purchased from Canadian
7 suppliers?

8 THE WITNESS: They are all purchased
9 from Canadian suppliers but where they are produced,
10 I do not know.

11 MR. SEDGWICK: As this gives
12 our costs and so on it should be considered a
13 confidential document unless the other dealers are
14 going to give their costs.

15 THE CHAIRMAN: We have asked
16 them to do that and they have done so.

17 MR. SEDGWICK: Fine.

18 THE CHAIRMAN: Q. This is a list of
19 the material you have now and, of course, there
20 is nothing to prevent you from adding other
21 merchandise as you move along in terms of what
22 you are prepared to supply?

23 A. Hopefully we will.

24 Q. You will?

25 A. Yes, sir.

26 Q. That is merchandise that is
27 either returnable or non-returnable?

28 A. Returnable.

29 MR. SEDGWICK: Returnable.

30 THE CHAIRMAN: Q. Why would you



1 confine yourselves as merchandisers to material
2 which is only returnable?

3 A. Because of the volume we do
4 we get stuck with too many items in our warehouse
5 if they are non-returnable.

6 Q. Let us go back to the Coca-Cola
7 example which is non-returnable. Why would you
8 hesitate if you could work out a deal with Coca-
9 Cola in making and supplying that kind of commodity?

10 A. Our business operates on a
11 return basis and we always work on a returnable
12 basis and because our items are returnable we
13 are able to give the dealers a smaller quantity
14 instead of giving them a gross we can give them
15 12 or 24 or, in plain words, small supplies and this,
16 over a year, helps the smaller accounts.

17 Q. There is nothing to prevent
18 you thought, from selling non-returnable materials?

19 A. I wish we could.

20 DR. JEANNERET: When you list
21 on Exhibit 5 children's records the supplier
22 is shown as Capital Records Limited, or toothbrushes,
23 Tek Hughes Limited is the supplier, then you would
24 expect to be the exclusive supplier of toothbrushes
25 or of children's records or just toothbrushes that
26 came from Tek Hughes Limited and children's records
27 that came from Capital Records Limited. I am
28 not absolutely sure I understand what exclusivity you
29 claim?

30 THE WITNESS: Tek toothbrushes and





1 Capital records and that is all we would claim
2 exclusivity for. If they want to buy some other
3 toothbrushes, that is their business.

4 MR. CAMP: Pardon?

5 THE WITNESS: If they want to buy some
6 other make of toothbrush, that is their business.

7 MR. CAMP: As far as returns
8 are concerned, if he wants to make a return you
9 will only accept Tek toothbrushes?

10 MR. SEDGWICK: And Capital records.

11 THE WITNESS: And Capital records.

12 DR. JEANNERET: But there is nothing
13 to restrict the ranges or kinds of merchandise you
14 might carry from time to time and anything that
15 you added to your list, you would expect
16 exclusivity on then with the dealer?

17 THE WITNESS: Provided they purchased
18 them from us.

19 DR. JEANNERET: That is the jump
20 in the interpretation that is hard to make, reading
21 the agreement.

22 THE CHAIRMAN: I think it might
23 be useful for us at this juncture to have a break
24 for about 10 or 15 minutes. I would like to look
25 through the documents and then we will come
26 back and resume our discussion.

27 ---Recess.
28

29 MR. SEDGWICK: Before you resume
30 questioning Mr. Romanez, I have three documents that



1 I thought were relevant to what has been said and
2 may be helpful. The first is a letter dated
3 April 21st, 1971 from Mr. Frank A. Enfield of
4 Enfield, Kimberley and Henrich, solicitors in
5 Toronto and he was the gentleman who drew up the
6 controversial dealer agreement and just as
7 antecedent background I will point out it was
8 originally thought they might have a sort of consign-
9 ment agreement but this letter tells what he
10 thought the agreement meant and it is addressed
11 to Mr. McMonigle and it says:

12 " Dear Bob:

13 Pursuant to our recent discussion,
14 I have prepared a draft of a dealer
15 agreement, a copy of which you will
16 find enclosed. This, of course, no
17 longer is concerned with the consignment
18 process, but rather contemplates a
19 straight sale with the right to make
20 returns, a service charge on overdue
21 accounts and your right to attend at
22 any time to pick up the merchandise
23 and credit it to the dealer's account.

24 You will notice the agreement
25 covers publications and merchandise.
26 This is in view of the fact that you
27 are now handling certain goods and
28 supplies that are not publications.

29 In regard to the display
30 equipment agreement, you were



1 " considering some method of marking
2 the equipment indelibly with your
3 name so that it could be identified
4 easily at any time."

5 As to that, we never did send out the agreement.
6 I will file that, sir.

7 THE CHAIRMAN: Before you go on
8 I will, of course, accept this but the only problem
9 I see, and I am sure you see it as well, is that
10 there is not any real identification of the
11 document.

12 MR. SEDGWICK: I am sorry, I think
13 I have it here. Let me, instead of filing that
14 one I will file this one which I think has attached
15 to it the dealer agreement. In any event, I
16 will tell you sir that I have somewhere and will
17 file the original of that letter to which he has
18 attached the agreement.

19 THE WITNESS: It was written to me.

20 MR. SEDGWICK: I have it somewhere
21 but I just brought a photostatic copy because my
22 recollection is it is the same as the one we
23 subsequently sent out.

24 THE CHAIRMAN: That would make the
25 letter more useful.

26 MR. SEDGWICK: Here it is. I will
27 file, instead of that one, I will leave that one
28 as well, there is the original with the documents
29 attached and I think they are the same, I did not
30 check them actually but that is the original letter





1 and I just Xeroxed a copy of it.

2 THE CHAIRMAN: If we may, I will
3 file this letter as Exhibit 7 and we will give
4 the original back and we will keep a copy.

5
6 ---EXHIBIT No. 7: Copy of letter dated
7 April 21, 1971 to Robert
McMonigle from Frank A. Enfield.

8 THE CHAIRMAN: It is a letter from
9 Enfield, Kimberley and Hemerich dated April 21st,
10 1971, addressed to Mr. Robert McMonigle, Metro
11 Toronto News Company to which is attached a
12 document entitled, "Dealer agreement" and a
13 second document entitled, "Display Equipment
14 Agreement".

15 MR. SEDGWICK: That is how we got
16 it.

17 Then, sir, and I think this is
18 relevant, on the 22nd of September, 1971, the
19 Credit Manager, Mr. Macfarlane wrote to circularize
20 the dealers and I am not sure whether he circularized
21 all but the letter is important. It reads:

22 " Dear Dealer:

23 In the past there has been a
24 misconception regarding our terms
25 of sale. We are a wholesaling agency,
26 selling to dealers on a guaranteed
27 sale basis. Magazines and novels
28 are not sold 'on consignment'.

29 Dealers are expected to pay their
30 accounts on a weekly basis, leaving only



1 " the total of returns not yet
2 credited outstanding in their accounts.

3 In a short time a dealer
4 agreement between Metro Toronto News
5 Company and yourself will be
6 distributed to you. It will explain
7 this point in greater detail.

8 Please co-operate and avoid
9 the unnecessary problems incurred
10 due to held deliveries. Remember
11 that it takes two weeks to reinstate
12 a held account; this means that four
13 deliveries can be missed."

14 I believe, and I believe Mr. Romanez will confirm
15 this, that this was sent only to the weekly
16 dealers, is that correct?

17 THE WITNESS: I am not exactly sure.

18 MR. SEDGWICK: Then it was followed --

19 DR. JEANNERET: Was it weekly or
20 weaker?

21 MR. SEDGWICK: Both.

22 THE CHAIRMAN: Q. What is meant
23 by "held"?

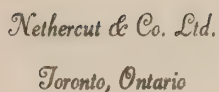
24 A. Supplies that are temporarily
25 held for non-payment.

26 Q. And then it takes two weeks
27 to reinstate?

28 A. That is correct.

29 THE CHAIRMAN: This will be

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Exhibit 8.



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THE CHAIRMAN: The letter is dated
1971 and Mr. Sedgwick has
its and it is signed by Larry Macfarlane,

Q. Now, Mr. Romanez, when is it you went to that convention?

A. The beginning of August.

Q. You were back by the 22nd of September, were you?

A. I am sorry, the end of September.

Q. Just a moment. I am asking Mr. Romanez a question.

A. It was in the middle of
October.

Q. I beg your pardon?

A. About the middle of October.

Q. When did you go?

A. At the beginning of October.

Q. You went at the beginning of October and you were in your office in Toronto on the 22nd of September, were you?

A. Yes.

Q. Were you there right through to the end of September?

A. Yes.

Q. Because we had heard, at least



1 I thought, that the agreements were sent out before
2 the end of September?

3 A. They were sent out and there
4 is a letter, I think Mr. Sedgwick has the other
5 letter when the agreement was sent out.

6 Q. Does it have a date on it?

7 MR. SEDGWICK: No, it did not
8 because I think they were all sent out the same
9 day and I asked for a date and the best date I
10 could find -- because it is not dated -- was
11 that they were sent out at the end of September.

12 Then, there is this letter of
13 transmittal and as I say I have been unable to find
14 a precise date and the best I can get is that it
15 was sent out about the end of September.

16 THE CHAIRMAN: Our information to
17 date is that the documents were dated about
18 September 29th, they were marked with a stamp.

19 MR. SEDGWICK: That is correct.

20 THE CHAIRMAN: Q. So, if we understand
21 it correctly, Mr. Romanez was still here on
22 September 29th?

23 A. I left on September 29th, if
24 I recall correctly.

25 Q. Are you telling us this
26 was an action which was done without your knowledge
27 even before you left?

28 A. Yes, sir.

29 Q. So this activity was going
30 on without consultation with you even though you were
there?

A. Absolutely.



1 A. Absolutely.

2 MR. SEDGWICK: May I read the letter?

3 THE WITNESS: Strictly as a credit
4 reference.

5 MR. SEDGWICK: The letter of trans-
6 mittal, which I will file, says:

7 "Dear Dealer: It has been our feeling
8 for some time that there should be a
9 clearly defined working arrangement
10 between ourselves and our dealers.

11 "Therefore, we would ask that
12 you sign and return one copy of the
13 attached dealer agreement as soon as
14 possible.

15 "Should there be any questions,
16 please contact me at 755-1166.

17 "Sincerely, Larry Macfarlane,
18 Credit Manager."

19 As to that, it has already been said that it was sent
20 out with the agreement and only to the 737 dealers out
21 of about 6000, as shown on the list which I produced.

22 ---EXHIBIT NO. 9: Letter of Transmittal

23 THE CHAIRMAN: Q. Just before we
24 proceed, in all fairness, Mr. Romanez, I am concerned
25 with the evidence that you gave at the outset this
26 morning. The evidence, as I now understand it, and in
27 all fairness to you, I want to understand your
28 position. At the beginning this morning, you
29 said, if I recall, and the transcript will be
30 available, that you were away when this was done.



1 The first you knew about it was somebody told you
2 on the telephone?

3 A. Yes.

4 Q. We understand now from you that
5 you were here when this was going on, but you
6 didn't know about it?

7 A. That is the same thing. As far
8 as I am concerned, yes, I didn't know about this
9 until it had actually been sent out, until I was
10 away.

11 Q. That is your information?

12 DR. JEANNERET: Could I ask if you
13 expressed a reaction to the fact that it happened,
14 Mr. Romanéz, I mean, did you take a position at that
15 time regarding whether or not it should have happened
16 or that you wanted to reverse it or didn't want to
17 reverse it, or that this was fine or this was what
18 you intended to do anyway? Did you take any position
19 on this?

20 THE WITNESS: No, I didn't, for
21 this reason, that this was what we had intended
22 to do anyway. We had intentions of sending this
23 agreement out eventually, except it was premature.
24 The actual draft was not ready yet before we sent
25 it out, but we had intended to send it out.

26 DR. JEANNERET: In other words, you
27 don't attach a great deal of importance to the fact
28 that you were not consulted and you were not here.
29 It might have happened if you were here and you
30 had known about it?



1 THE WITNESS: That is right.

2 MR. CAMP: What, then, have you done,
3 or do you propose to do with regard to dealers who
4 won't sign this agreement or have not signed?

5 THE WITNESS: We -- I was asked the
6 same question by our department manager; absolutely
7 nothing.

8 MR. CAMP: So there is no prejudice
9 against any dealer, large or small, who will not
10 sign the agreement ?

11 THE WITNESS: None whatsoever.

12 MR. CAMP: So the agreement is kind
13 of relatively meaningless?

14 THE WITNESS: Psychological.

15 MR. CAMP: Will the redraft agreement
16 still have the same company policy as to whether
17 or not a dealer signs it?

18 THE WITNESS: Yes.

19 THE CHAIRMAN: Q. We understand you
20 have been in discussion with the Retails Merchants'
21 Association?

22 A. Yes.

23 Q. You had a meeting with them a
24 short while ago, and did you give any commitment to
25 them that you would prepare a redraft of the agreement?

26 A. I just said that if a new
27 agreement was drafted, we would submit it to the
28 Retail Merchants' Association first to come up
29 with something that was acceptable to both of us.

30 MR. CAMP: I just want to pin down



1 the point. Nevertheless, notwithstanding all your
2 sales, your position is whether or not a dealer
3 signs this agreement or whether or not he signs
4 the next agreement, you will still do business with
5 him? That is, you won't cut him off or, what is
6 the expression -- hold?

7 THE WITNESS: Hold. It is a
8 difficult thing to say. We have this thing in
9 business.

10 MR. CAMP: I understand that but it
11 is not an answer yet.

12 THE CHAIRMAN: Q. Are you saying
13 you have not decided what you will do?

14 A. It is psychological, but it is
15 not that point.

16 DR. JEANNERET: It is legally binding,
17 though?

18 THE WITNESS: It is in case of
19 bankruptcy, this was the original purpose, for
20 bankruptcy purposes.

21 THE CHAIRMAN: Q. Is it not legally
22 binding -- of course, your counsel ---

23 A. I can't answer that, but I imagine
24 Mr. Sedgwick could.

25 MR. SEDGWICK: I think there should
26 be an agreement. This one may not be ideal, but
27 something of this kind, I think, should be sent
28 out. That is my own opinion.

29 MR. CAMP: It has psychological
30 value?





1 MR. SEDGWICK: I think there are
2 some things that are important, for instance, the
3 right to recover in the event of bankruptcy, the
4 right to seize and so on. Those are matters that
5 I think my client should protect himself against.

6 DR. JEANNERET: You lose the right
7 to seize in the case of bankruptcy. You don't gain
8 anything. I am asking ---

9 MR. SEDGWICK: I don't know. I am
10 not a bankruptcy lawyer.

11 DR. JEANNERET: No, but I mean,
12 you are distinguishing between consignment and
13 returnable goods and converting them from consignment
14 to returnable and vesting them in the dealer.

15 THE CHAIRMAN: I am sure you are
16 neither a bankruptcy lawyer nor a bankrupt lawyer,
17 Mr. Sedgwick.

18 MR. SEDGWICK: I don't know, I hope
19 to be neither. (Laughter)

20 MR. CAMP: Can you help me on one
21 thing, Mr. Romanetz: You mentioned that the
22 importance of the merchandise could be represented
23 by one half of one per cent of your net. Could you
24 give me the gross figure that that would represent?

25 THE WITNESS: The gross figure?
26 About \$10,000 a year in profit.

27 MR. SEDGWICK: No, no, the gross
28 sales.

29 THE WITNESS: Net sales is \$59,000
30 a year. I am sorry, \$59,000 up to the end of October.





1 MR. CAMP: So it would represent
2 a \$65,000 piece of business, that whole line you
3 are talking about, the merchandise line?

4 THE WITNESS: Yes.

5 MR. SEDGWICK: It is very small.

6 MR. CAMP: Now, I understand that
7 you have employed this psychological device in order
8 to relieve your concerns with regard to two things,
9 the first, doubtful accounts or possible doubtful
10 accounts?

11 THE WITNESS: Yes.

12 MR. CAMP: And the second is to
13 safeguard against improper returns?

14 THE WITNESS: Right.

15 MR. CAMP: With regard to the second,
16 I take it people who make improper returns, is
17 there a relationship between people who make
18 improper returns and people who are doubtful accounts?
19 Are they the same kind of people?

20 THE WITNESS: That is a hard question
21 to answer.

22 MR. CAMP: Well, I gathered that
23 you didn't apply this policy against all your dealers,
24 but, as a matter of fact, your customers, you
25 really applied it against the smaller ones?

26 THE WITNESS: Yes, you are right.

27 MR. CAMP: Is it your experience,
28 with regard to the business of improper returns,
29 that they are the greater offenders?

30 THE WITNESS: Exactly.



1 MR. CAMP: In other words, if someone
2 is going to do that, he is prepared to be dishonest?

3 THE WITNESS: Exactly.

4 MR. CAMP: What I would like you to
5 tell me is, if you are selling him, or them, a
6 certain item which he guarantees under your contract
7 to only buy from you, how does it really improve
8 your control? For example, if you are selling him
9 Tek tooth brushes, all he has to do one way or the
10 other is obtain, through other means, Tek toothbrushes
11 and the possibility of improper returns is exactly
12 the same as it is whether or not he signs the
13 agreement?

14 THE WITNESS: This is why I told you
15 it was psychological.

16 MR. SEDGWICK: It is true, Mr. Camp,
17 that dishonesty is something that I have wrestled
18 with for 50 years and don't know the cure for.

19 MR. CAMP: As a politician?

20 MR. SEDGWICK: As a lawyer, not a
21 politician.

22 MR. CAMP: I am ---

23 MR. SEDGWICK: It is true it is
24 difficult to detect.

25 DR. JEANNERET: May I follow that
26 question by coming back to this one I asked you
27 earlier, Mr. Romanez: If you decided to add a
28 particular line, supposing you hadn't had Tek
29 tooth brushes and you decided to add them, then you
30 would expect your dealers to buy Tek tooth brushes, if





1 they were going to carry them, exclusively from
2 you under this contract?

3 THE WITNESS: Right.

4 DR. JEANNERET: Now, I put it to you,
5 and I am not suggesting this was your intention, but
6 I am asking you whether or not it would not be
7 the situation, supposing that you decided to carry
8 the paperbacks, perhaps the mass market paperbacks
9 of a particular publisher, then you would expect
10 that dealer to buy those from you?

11 THE WITNESS: We would expect him
12 to buy, if he bought it from us, we would expect
13 him to buy from us exclusively.

14 DR. JEANNERET: I didn't say that.
15 I said, if you listed them as merchandise available,
16 would you expect him to buy exclusively from you?

17 THE WITNESS: By no means.

18 DR. JEANNERET: You don't even want
19 him to buy Tek tooth brushes from you if he doesn't
20 want to?

21 THE WITNESS: We would love him
22 to buy. We would be delighted if he would buy
23 off us.

24 DR. JEANNERET: That is a different
25 position than you suggested was the one under
26 the question I asked you -- in answer to the question
27 I asked you a few minutes ago. I understood you
28 to say that if you decided to add Tek toothbrushes
29 to the line of merchandise you are carrying, then
30 you would expect him to buy his Tek toothbrushes from



1 you?

2 THE WITNESS: No, no, no. I did
3 not say that. I said if he bought Tek toothbrushes
4 off us, we wouldn't expect him to buy Tek toothbrushes
5 off anybody else, not that he was forced to buy
6 Tek toothbrushes off us, because we carry Tek
7 toothbrushes. This is virtually impossible. I
8 wish it was possible.

9 THE CHAIRMAN: Q. Isn't that the
10 intent of the first paragraph?

11 DR. JEANNERET: It is very difficult
12 to read that paragraph to mean anything else.

13 MR. SEDGWICK: I think it is clear.
14 If he buys Tek from them, he buys from nobody else.
15 If he buys no Tek toothbrushes from them, he can
16 buy where he likes, but when he buys from them,
17 they are returnable for cash so he doesn't want
18 them buying from two sources. The agreement may
19 not be ideal, but that is what is intended.

20 THE WITNESS: Exactly.

21 THE CHAIRMAN: We will not
22 disagree with your interpretation.

23 MR. SEDGWICK: I didn't draw it up.

24 (Laughter)

25 MR. CAMP: Who makes the determination
26 as to which dealers are asked to sign this contract?

27 THE WITNESS: It was never made.

28 MR. CAMP: There were a lot of dealers
29 who got them.

30 THE WITNESS: Weekly accounts, as



1 was stated.

2 MR. CAMP: Whoever is obliged to
3 pay weekly?

4 THE WITNESS: Yes, weekly.

5 THE CHAIRMAN: Q. I think we are
6 just about finished, but, do I take it you are the
7 general manager of the operation here, is that correct?

8 A. That is correct.

9 Q. Is what you have told us really,
10 does it really mean that you knew about this draft
11 agreement that Mr. Enfield had prepared, and that
12 you have, in fact, approved of it in principle, you
13 thought it was all right before it went out?

14 A. In principle, yes.

15 Q. And the decision to send it out,
16 you didn't know about?

17 A. That is right.

18 Q. Now, you are responsible, are
19 you not, to the president of Metro Toronto News
20 Company Limited?

21 A. That is true.

22 Q. Who is that?

23 A. Mark Molansky.

24 Q. He is still the president at
25 this time. Did he know about this agreement going
26 out?

27 A. He did not.

28 Q. He did not. Did anyone else in
29 the executive of Metropolitan Toronto News Company
30 Limited know about it before it went out?



1 A. No, they did not.

2 Q. They did not. Have you had any
3 approval by them of that agreement or any disapproval
4 of it since it went out?

5 A. Disapproval?

6 Q. Yes.

7 A. The only contact I have had has
8 been with our own lawyers over here.

9 Q. You have not discussed this with
10 the president of the company?

11 A. Absolutely not.

12 Q. Or any officer of the company?

13 A. Absolutely not.

14 Q. Have they any interest in this
15 agreement or the action that has been taken by your
16 company in this regard?

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1 A. I really cannot answer that, I
2 have not been in contact with him in reference
3 to this. I left it up to him to handle.

4 THE CHAIRMAN: That explains the
5 presence of yourself, Mr. Sedgwick, and the young
6 gentleman with you?

7 MR. SEDGWICK: Exactly.

8 THE CHAIRMAN: I see.

9 Do I also take it, and you can
10 confirm this for me, that there were certain
11 acquisitions made of which we have heard something
12 before at some length which, in effect, took place
13 commencing on about April, 1971, is that about
14 right?

15 MR. SEDGWICK: Yes, I think that
16 is correct.

17 THE CHAIRMAN: How long before
18 April 21st, 1971, which is the date of Mr. Enfield's
19 letter, how long before that had instructions been
20 given to Mr. Enfield to prepare such an
21 agreement?

22 MR. SEDGWICK: I can give you his
23 original letter.

24 THE WITNESS: It was prior to my
25 time which was September, 1970.

26 MR. SEDGWICK: I can present to you
27 the letter from Enfield enclosing the first draft
28 which was on September 8th, 1970 and that was
29 before Mr. Romanez' time and that letter was
30 considering a consignment basis.





1 THE CHAIRMAN: Q. I note that and
2 I would like this to be marked and have it
3 returned to you as well. This will be
4 Exhibit No. 9, the letter of transmittal, I think,
5 is No. 9, Exhibit 7 is the Enfield letter of September
6 21st and Exhibit 8 was a letter in advance of the
7 letter of transmittal and Exhibit 9 was a letter
8 of transmittal, so this will be Exhibit No. 10,
9 a letter of September 8th, 1970 from Mr. Enfield,
10 and I note from this document, which I have not
11 seen before, that the agreement that is attached
12 to it, which I have not seen before, makes no
13 provision for exclusivity in relation to
14 the language that has been produced in the final
15 draft. Do you know who it was in your firm who
16 instructed Mr. Enfield to insert a clause or clauses
17 such as 1 and 2 in a dealer agreement which is
18 Exhibit 1, which provides for the exclusivity,
19 do you know who that was?

20 A. Yes.

21 Q. Who?

22 A. It was me.

23 Q. Did you make that instruction
24 on the basis of instructions you had received or
25 by your own motion?

26 A. I made it on instructions and
27 my own motion because I found there was a problem
28 going on in our agency.

29

30



1 ---EXHIBIT NO. 10: Letter dated September 8th, 1970
2 to Metro Toronto News Company
3 from Frank A. Enfield.

4 DR. JEANNERET: Mr. Romanez, you
5 indicate that you interpret clause 1 as not being
6 restrictive insofar as the dealer's freedom to
7 purchase any merchandise he likes from anybody he
8 likes with the one exception, that if he has
9 been buying it from you then he should only buy
10 it from you?

11 THE WITNESS: 100 per cent.

12 DR. JEANNERET: Would you tell me
13 why clause 1 has the statement in it, "Metro
14 Toronto News Company agrees to make available to
15 the dealer on request details of all the publications
16 of merchandise that are available from time to time"?
17 I can only read that as meaning "this is a list
18 of material you must buy from us"?

19 THE WITNESS: That is straight, good
20 business. Anything we have available we must
21 present to our retailers.

22 DR. JEANNERET: But in the context
23 of restricting, you include this?

24 THE WITNESS: We are not telling him
25 he has to buy everything, show me where it says
26 he has to buy it.

27 DR. JEANNERET: You say that he
28 will deal exclusively and in the same paragraph:
29 "any merchandise or publications supplied the
30 Metro Toronto News Company".

MR. SEDGWICK: That is supplied.



1 DR. JEANNERET: And he will not
2 purchase the same publications or merchandise
3 from any other supplier or source and the very
4 next sentence is, "Metro Toronto News agrees to
5 tell him what this merchandise is"?

6 MR. SEDGWICK: There is a difference
7 between available and supply. He is told what
8 is available and if he decides then to buy it
9 we ask that he do not buy that same article from
10 anyone else, but he does not have to buy everything
11 that is available to him. He can say, "I just
12 do not want it".

13 DR. JEANNERET: The word
14 "available" is not used in that context?

15 MR. SEDGWICK: It is used in the
16 context that they will make available a list
17 of merchandise. But it does not say he has
18 to buy it. It says, "agrees to make available upon
19 request", what we have available to him and they
20 will tell him what they have and he can make
21 up his mind as to whether he buys it and that is
22 how I construe it.

23 THE CHAIRMAN: I think we are
24 just about towards the end but I think it would
25 be most useful to us, Mr. Sedgwick, as you can
26 see, we are having in difficulty in -- I do
27 not think we are having too much difficulty --
28 but obviously there are substantial questions that
29 concern us with relation to paragraphs 1 and 2 and
30 I think in all fairness we should have the benefit



1 of your interpretation as to how you think those
2 two sections should be, because quite clearly
3 we are going to have to have to give a decision
4 on this ourselves but we would not want to do it
5 without a concise view from you.

6 MR. SEDGWICK: You want me to give
7 you a written submission?

8 THE CHAIRMAN: It would be helpful.

9 MR. SEDGWICK: It might be better
10 than saying it now. I have already said how I
11 construe it, because I construe it as the
12 meaning -- as I have just said -- that certain
13 things will be available to the dealer and if he
14 then decides to buy from us then those things
15 he agrees not to buy them from anyone else because
16 we agree that we will take those goods back and
17 give him cash credit and we do not want to take
18 back goods that were not bought from us because
19 we would be paying for them more than they are
20 worth in many cases and, indeed, we may on
21 occasion be buying goods that have been purloined
22 from our own premises so we ask him, if he decides
23 to buy from us, that is any article, that
24 he buy only from us and subject always to paragraph
25 4 where he can terminate the agreement by notice
26 or otherwise, and that is my conception of it.

27 If it does not mean that I can
28 only say that is what it was intended to mean
29 and this is to be borne in mind that out of some
30 6,000 accounts it was only sent to some 737 and if



1 I use Dr. Jeanneret's expression, they were
2 the weaker or weekly ones and only 43 returned them
3 and of those six returned them with serious
4 qualifications and that is our position and I do
5 not see how you can say we were trying to force
6 on our dealers an element of exclusivity because
7 a lot of important dealers were never sent the
8 document at all.

9 THE CHAIRMAN: I wonder, too, if
10 you might comment on a question I have in mind,
11 and that is, should anything be taken by this
12 Commission on the basis of the evidence that we
13 heard some time ago and the evidence that is given
14 here, should anything be taken from the evidence
15 that the decision to make acquisitions by the
16 Pierce News Company across southern Ontario was
17 roughly at about the same time and that this
18 draft agreement was proposed by Mr. Enfield,
19 is there any connection between the period of this
20 agreement and -

21 MR. SEDGWICK: I am assured not,
22 Mr. Romanez said under oath there is not and
23 it must be accepted because there is a suggestion --

24 THE CHAIRMAN: I notice the
25 question has not been asked before.

26 MR. SEDGWICK: I will ask him
27 anyway and see what he answers: Was there any
28 connection at all between the circulation and this
29 agreement whether this was done before they knew
30



1 about it?

2 THE CHAIRMAN: Q. You were the person
3 who made the decision, that acquisition would take
4 place?

5 A. I was the person who initiated
6 this dealer agreement and I think Mr. Sedgwick has
7 my letter in there to the retail accounts because
8 of the thefts that were taking place.

9 Q. Are you telling us that
10 Mr. Mark Molasky never saw this agreement at
11 any time?

12 A. Absolutely not, and I swear
13 on it.

14 Q. Is it not something that you,
15 in the course of your duties, ought to have
16 brought to the attention of the President of the
17 company?

18 A. I did not think it was that
19 important, I felt this was strictly business that
20 I was conducting to protect my interests.

21 MR. SEDGWICK: I do not know if I
22 need produce it but there is a letter written
23 by Mr. Romanez about that time, sent to all the
24 dealers complaining about thefts and complaining
25 about things that were stolen from the company,
26 speaking on returns from some dealers and was
27 written about that time. I have it here, do
28 you want me to read it? It was written in
29 April, 1971, which was about the time when Mr. Enfield
30 sent the draft which became with some modification



1 this dealer agreement. Perhaps I should read it
2 because it indicates the frame of mind: It is
3 headed, "Very Important Notice".

4 "
5 Dear Dealer:

6 Once again it has been brought to
7 my attention that you may be or may
8 have been approached by
9 individuals selling paperbacks and
10 comics at reduced prices. They will
11 suggest that you buy them and then
12 return them to our company for credit
13 and a quick profit. Please be warned
14 that these may be stolen and that you
15 can possibly be charged as a receiver
16 of stolen goods.

17 Also, if you buy any magazines,
18 comics or paperbacks, for cash, from
19 any of our employees, you are aiding
20 and abetting a criminal act. These
21 are serious charges and can place
22 you, and our employee, in a very
23 precarious position. We will prosecute
24 to the fullest extent of the law.
25 You will jeopardize your good
26 reputation and risk your business.
27 Is it worth it?

28 Please co-operate. If you
29 are approached, let us know."

30 Now, that was sent out to the weekly or weaker



1 accounts or some of them that were suspected in
2 April of 1971 and the draft of the agreement was
3 received about this same time and I think I should
4 ask Mr. Romanez this: In the year proceeding
5 that you made an estimate of how much you lost by
6 theft, can you give the Commission about the
7 figure you reached?

8 THE WITNESS: The closest we could
9 estimate was between \$300,000 and \$500,000.

10 THE CHAIRMAN: Q. Did you have
11 advice, legal advice, on the construction of
12 that letter?

13 A. Yes.

14 MR. SEDGWICK: Not from me.

15 THE CHAIRMAN: Not from Mr. Sedgwick?

16 MR. SEDGWICK: No, I never heard
17 of it.

18 THE CHAIRMAN: I would like to have
19 that as an exhibit. It is intended to be a
20 strong letter?

21 THE WITNESS: Oh yes.

22 MR. SEDGWICK: Oh yes, to deal with
23 a serious situation.

24 THE CHAIRMAN: Q. Now, have any
25 prosecutions been laid against any retailers
26 to whom that letter was sent?

27 A. No.

28 MR. CAMP: Were there any
29 prosecutions against any employees?

30 THE WITNESS: Employees, yes.



1 MR. CAMP: If my memory serves
2 me right, there were also some confessions?

3 THE WITNESS: Yes.

4 MR. CAMP: By signed statements?

5 THE WITNESS: Yes.

6 MR. CAMP: And by some of your
7 employees, some of whom are still in your employ?

8 THE WITNESS: Some.

9 THE CHAIRMAN: How many?

10 THE WITNESS: I could not tell
11 you.

12 DR. JEANNERET: We took evidence
13 on that.

14 THE CHAIRMAN: How many at this
15 time?

16 THE WITNESS: I could not really
17 tell you, probably about half of what there were
18 at that time.

19 THE CHAIRMAN: So you have kept
20 half?

21 THE WITNESS: They are very good
22 employees.

23 THE CHAIRMAN: So, this exhibit
24 will be Exhibit 11.

25 ---EXHIBIT NO. 11: Circular letter dated
26 April of 1971 headed
27 "Very Important Notice"
sent to dealers from
J. Romanez.

28 THE CHAIRMAN: I would be obliged
29 if you could give us that submission at some time.
30



1 MR. SEDGWICK: I will.

2 MR. CAMP: I just wish to
3 clarify one point: There were 737 of these
4 weekly dealers?

5 THE WITNESS: Yes.

6 MR. CAMP: And you had responses
7 of one kind or another from 143 and that leaves
8 594, by my simple arithmetic who had not been
9 heard from?

10 THE WITNESS: Yes.

11 MR. CAMP: But you did hear some
12 time in mid-October a good deal, or some protest
13 from them?

14 THE WITNESS: Yes.

15 MR. CAMP: What was the basis would
16 you categorize the protest, what was their general
17 line of disagreement?

18 THE WITNESS: Well, by the time
19 I came back from my vacation this had all
20 quieted down completely and I heard very little
21 afterward. It did not actually flare up again
22 until I heard from Mal Henderson from the
23 Retail Merchant's Association which was a
24 couple of weeks ago.

25 MR. CAMP: Do you have some idea
26 in your mind about the nature or the general
27 nature of the complaints?

28 THE WITNESS: The general nature
29 was a misunderstanding.

30 MR. CAMP: Of paragraphs 1 and 2?



1 THE WITNESS: Paragraph 1 but
2 when we explained paragraph 3, they understood.
3 In every case when they complained and we
4 explained it, they understood what it was.

5 MR. CAMP: Did you get any more
6 than 143 as a result of that?

7 THE WITNESS: No.

8 THE CHAIRMAN: Are you going
9 to redraft this agreement or are you going to
10 withdraw it?

11 THE WITNESS: It will depend
12 upon our solicitors.

13 DR. JEANNERET: May I ask you --
14 and I am having a great deal of difficulty following
15 this -- what do you mean by saying it is the
16 psychological value of the agreement on which you
17 are depending, depending on however you used
18 that word "psychological". I suppose to some
19 extent it is psychological as it comes from the
20 possibility that it might be read as so
21 many people tend to read clause 1 as meaning
22 that it is restrictive and that they are confined
23 to merchandise that you list that they must
24 buy from you and to that extent, psychologically it
25 would be very much in your favour.
26
27
28
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1 THE WITNESS: The psychological
2 comes in if you know you are committing theft,
3 knowingly, psychologically, if you feel there is
4 a chance you may get caught, you may not do it because
5 you don't want to get caught. If you are buying
6 merchandise from somebody else and returning it to
7 Metro and there is a chance there that you may be
8 found out, Metro may find out, Metro can lodge an
9 action against you for returning merchandise you
10 didn't buy from them.

11 DR. JEANNERET: As Mr. Camp pointed
12 out, it doesn't in any way ---

13 THE WITNESS: Deters.

14 DR. JEANNERET: I don't see how it
15 even deters.

16 MR. CAMP: I was going to ask legal
17 advice from counsel. In an agreement of this kind
18 is it legal and binding without a witness to the
19 signature?

20 MR. SEDGWICK: Yes, oh, yes, I
21 don't think a witness is necessary.

22 MR. CAMP: All you fellows always
23 want a witness for everything.

24 MR. SEDGWICK: You have somebody
25 to call for confirmation that you signed it. If
26 you and I made an agreement now, Mr. Camp, if we
27 both signed it, I don't think it would make it
28 illegal.

29 THE CHAIRMAN: Or immoral.

30 MR. SEDGWICK: Or immoral. I don't





1 know what the agreement would be about.

2 DR. JEANNERET: I want to ask you
3 to the extent of the agreement as you have drawn it,
4 clause 1 in particular, might survive, that it would
5 enhance the importance, the value of being listed
6 in your list of merchandise offered to such a point
7 that when you were negotiating the terms with the
8 supplier, you would be in a position to
9 press for better and better terms, that is to say,
10 the interpretation that everyone but you seems to
11 be inclined to put on clause 1 would be interpreted
12 by the supplier as a mighty good reason why he
13 should do business with you under whatever terms
14 he can negotiate, you with him, the best terms
15 possible.

16 THE WITNESS: This didn't even enter
17 my mind.

18 DR. JEANNERET: No.

19 THE CHAIRMAN: I wonder, Mr. Sedgwick,
20 if you might be able to prepare -- you may not be
21 able to have this done for you, but your client
22 might prepare -- we have heard a great deal about
23 the whole concern dealing with returns. If you
24 could ask your client to prepare a list of those
25 events in the past nine months where they have
26 found any evidence of return of goods which were
27 not, in fact, sold by Metro Toronto News to the
28 retailer? This can be -- this is what we are
29 talking about. It would be helpful to know.

30 MR. SEDGWICK: It is very difficult



1 to say, of course.

2 THE CHAIRMAN: I appreciate that.

3 MR. SEDGWICK: We can't identify what
4 comes back, whether it is from our stock or elsewhere.

5 THE WITNESS: We can.

6 MR. SEDGWICK: Have you been able
7 to detect cases of returns?

8 THE WITNESS: Yes.

9 MR. SEDGWICK: Tell the Commission.

10 THE WITNESS: We have numerous
11 instances.

12 THE CHAIRMAN: Q.I am talking about
13 in the last nine months. You have told us you
14 have done a good job in clearing this up. That
15 is one of the reasons you gave and you have done
16 a good job in this regard?

17 A. Hopefully.

18 Q. I am just wondering, during the
19 period you have located any examples of this
20 activity, have there been any?

21 A. That is the reason that I did
22 not immediately release the agreement, because
23 this died out completely.

24 Q. Did it die out completely?

25 A. Not completely, but it did not
26 become a pressing point any longer.

27 Q. So it didn't become a pressing
28 point any longer and, therefore, in your view,
29 there was not any need for this agreement to go out
30 at all?



1 A. Exactly.

2 Q. All right.

3 MR. SEDGWICK: You were asking, sir,
4 about the Retail Merchants' Association. As Mr.
5 Romanez has said, he had meetings with Mr. Mal
6 Henderson who is here, by the way, the meetings
7 were very friendly and here is a long letter from
8 Mr. Romanez to Mr. Henderson where he sums up
9 those meetings and sums up what is intended. I
10 will read it if you like but I would be glad to
11 file it.

12 THE CHAIRMAN: Let us just file it.
13 That will be Exhibit No. 12.

14
15 ---EXHIBIT NO. 12: Letter from Mr.
16 Romanez, Metro Toronto News
17 Company, dated December 3, 1971
18 to Mal Henderson, Retail Merchants'
19 Association

20 THE CHAIRMAN: You might also indicate
21 to Mr. Sedgwick, if you could -- that answers the
22 question, therefore, very concisely, the point I
23 raised, but we would also be obliged, I think, if
24 we might be informed as to your client's intention
25 with regard to the continuance or the withdrawal
26 or the amendment of this document.

27 MR. SEDGWICK: I have discussed it
28 with them and my understanding, and Mr. Romanez
29 will correct me if I am wrong, is that we do not
30 intend to press any of the dealers who have not
sent the agreement in, to send it in. I should like



1 to consider, and Mr. Ridout will consider with them,
2 the amended agreement which might state more
3 explicitly what is intended because, what was
4 intended certainly was not covered under exclusivity.

5 My own feeling is there ought
6 to be an agreement between the dealer and the
7 wholesaler. Now, I have not considered the form
8 that I should take and, indeed, I don't think
9 anyone has, but if you are asking if we intend to
10 press for the return of this agreement by those
11 who have not signed it, the answer is no. This
12 agreement ---

13 THE CHAIRMAN: We are interested in
14 an expression of intention on the part of your
15 client with regard to what it intends to do
16 in respect to the agreement, which is Exhibit 1.

17 MR. SEDGWICK: We don't intend to
18 press for it.

19 THE CHAIRMAN: Those terms which
20 have been received and, therefore, binding with
21 your interpretation given, just generally what
22 your intentions are.

23 MR. SEDGWICK: Of the 648? It is really 142.

24 DR. JEANNERET: The 142 are going
25 to be under a degree of intimidation and if
26 you don't press for the rest of them, they won't
27 be. So I think the Chairman's --

28 THE CHAIRMAN: I would like an
29 expression of intention. Are you going to let the
30 agreement stand? Are you going to answer it now?



1 MR. SEDGWICK: I would like to answer
2 it now, but speaking off the top of my head, my
3 feeling is we should treat them all alike and we
4 shouldn't treat the ones who didn't sign the agreement
5 and send it back, in a position different from the
6 ones who did. It is also my feeling we should take
7 another look at the agreement and if it is effective
8 from either a legal or a public relation standpoint,
9 we probably should revise it and then I think,
10 submit it again and probably do, as we say we will
11 do, to Mr. Henderson, before we send it out, consult
12 the Retail Merchants' Association and see that it
13 is in a form that satisfies the dealers who are
14 members of that Association and their goodwill. We
15 cherish and we need their goodwill.

16 THE CHAIRMAN: I am not going to
17 say it is likely, but it is of interest to us what
18 your client's intentions are and it is of interest
19 to us within the short term.

20 MR. SEDGWICK: Do I state correctly
21 your position?

22 THE WITNESS: That is it precisely.
23 We have no intention of amending the agreements
24 that are in my briefcase and we will probably return
25 them.

26 THE CHAIRMAN: I would like some
27 indication of this.

28 MR. SEDGWICK: We say we will return
29 them.

30 THE CHAIRMAN: We would like some



1 indication of this in writing and your counsel can
2 assist us.

3 THE WITNESS: It is so few in number
4 that really, they don't matter. Out of over
5 6000 we have 142.

6 THE CHAIRMAN: I thought there were
7 748.

8 MR. SEDGWICK: We only got 142 back.

9 THE CHAIRMAN: Your client has
10 6000 retailers, about?

11 MR. SEDGWICK: About, and we only
12 sent out 700 or so. We can't send back 600 because
13 we never got them back. They still have them. They
14 never signed them, so we are only talking in the
15 overall picture of something which is miniscule.

16 All right, sir, thank you.

17 THE CHAIRMAN: Just a moment. Dr.
18 Jeanneret has suggested we might give an indication as
19 to what is going to happen next. I might say that
20 we have requested the same information from all of
21 the geographic wholesalers in Ontario and have
22 received virtually all of them now in terms of
23 response. It is our intention to take the information
24 that we have been given and, if necessary, we will
25 be in touch with Metro News again, or others, and
26 if we have any further information, we will proceed.
27 We are not exactly sure how we will deal with the
28 matter, but we do want to deal with it fairly
29 quickly, and the information that we asked for will
30 be useful, but our Inquiry is still wide open.



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MR. SEDGWICK: Right.

THE CHAIRMAN: Thank you, sir.

Thank you, gentlemen.

---Adjournment

